

STATE OF MICHIGAN
BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

Formal Complaint No. 95

Brenda K. Sanders
36TH District Court
421 Madison St. Suite 5067
Detroit, MI 48226

**MASTER'S
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

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MASTER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Michigan Judicial Tenure (“Commission”) filed a four-count Formal Amended Complaint (No. 95) against Judge Brenda K. Sanders (“Respondent”), a Judge of the 36th District Court, City of Detroit, State of Michigan. The action was taken pursuant to the authority of the Commission under Article 6, Section 30 of the Michigan Court of 1963, as amended and MCR 9.200 et seq. Pursuant to MCR 9.210 (B)(1), the Michigan Supreme Court, upon request of The Commission, appointed this writer to serve as master to conduct a hearing as required by the filing of the Amended Formal Complaint. The hearing was held on December 8, 9, and 10, 2014. The Respondent failed to appear at the hearing.¹ The following report containing findings of fact and conclusions of law is required by MCR 9.214.

The Amended Formal Complaint alleges: Count I: Lack of Mental Fitness; Count II: Fraud in Securing a Long-Term Leave of Absence; Count III: Failure to Cooperate with the Judicial Tenure Commission; and Court IV: Misrepresentations. The Commission presented sufficient evidence at the hearing for this writer to conclude that each count has been proven by a preponderance of the evidence (MCR 9.211).

Count I – Lack of Mental Fitness

Norman S. Miller, M.D., J.D., a board certified psychiatrist, with sub-specialty certifications in psychiatry and addiction psychiatry, testified that Respondent suffered from a psychotic disorder, manifested by delusional ideation. He indicated that a psychotic delusion is a fixed, false belief that cannot

¹ Respondent’s failure to appear may not, standing alone, be taken as evidence of the truth of the facts alleged against her. MCR 9.211(B)(1)

be changed by persuasion, argument or facts. The beliefs do not correspond with reality nor do they arise out of anything that is plausible or logical in the environment or culture (T, pp 421, 422).

The clearest evidence in support of Dr. Miller's conclusion is the December 20, 2013 letter sent by Respondent to U.S. Attorney Barbara McQuade (Eastern District of Michigan). He indicates that the letter is the result of delusional thinking, wherein Respondent manifests persecutory beliefs that are not rational; they do not correspond to reality. Her delusions arise "out of something that may have been true, but the delusion expands it, compounds it, and inflates it to a degree thatit doesn't correspond to reality." (T, p 423). He goes on to cite a number of claims in the letter that are examples of such delusional thinking. (T, pp 423 – 426).

Counsel² for Respondent have pointedly noted that Dr. Miller never interviewed Respondent and, therefore, his diagnosis is based upon insufficient information. Dr. Miller was requested by the Commission to evaluate Respondent. (T, p. 394). He made himself available on eleven different dates between April and June of 2014 for an evaluation (T, pp 397 – 400). Respondent failed to appear for any of the three dates (April 10³, June 4 and June 12, 2014)

T = hearing transcript

² The writer commends Respondent's attorneys Cyril Hall and Kevin Laidler for their competence and professionalism under truly difficult circumstances, particularly the lack of cooperation and non-appearance at the hearing of their client. Even when Respondent texted them during the hearing that she was resigning, they continued to push forward. The even-handed prosecution by attorneys Paul Fischer and Margaret Rynier, on behalf of the Commission, is also noted and appreciated.

³ Respondent claimed that on March 25th, 2014, her doctor scheduled knee surgery for 4/10/14 (Ex. 80, p. 38). That claim is contradicted by her own statement in a motion filed April 9, 2014 that she "was anticipating a knee surgery," not that one was scheduled (E Ex. 94)

that were actually scheduled. E-mails between Respondent's initial attorneys and the Commission show that the three dates were confirmed and the record indicates that Respondent was aware of the dates. (Ex. 9, 10, 36, 38, 40⁴). The record provides no plausible explanation, reason or excuse for Respondent's failure to appear for any of the dates.

On July 17, 2014 the Michigan Supreme Court ordered that a psychiatric Independent Medical Examination (IME) of Respondent be conducted within 30 days. The Order required Respondent's cooperation. Efforts to schedule an IME pursuant to the Order were unavailing (Ex 44,45,47,⁵ 48).

The inability of Dr. Miller to personally interview Respondent was solely the responsibility of Respondent. Although it would have been preferable to have been able to interview Respondent, Dr. Miller made it abundantly clear that he had "enough information to come up with [a diagnosis that] she's psychotic" (T, p. 462). He could not testify to the onset or the cause of her delusions (T, p. 462). Although indicating it to be "a provisional diagnosis...it doesn't in any way, shape, or form diminish that my diagnosis is psychosis."⁶ (T p. 460)

Dr. Miller's diagnosis is supported by the many documents and records he reviewed (Ex 63) and by the uncontradicted testimony of the following witnesses: 36th District Court Judges Kenneth King and Nancy Blount, Ed Welch, 25th District

⁴ All exhibits cited were admitted upon motions of the Examiner.

⁵ Dr. Miller even agreed to Respondent's request that, contrary to his usual practice, he would permit the interview to be videotaped in order to accommodate Respondent. (T, pp 410, 411)

⁶ Respondent's attorneys cite the results of two polls which found that 51% of Republican primary voters believed that President Obama was born outside of the United States and that a third of Louisiana Republicans blamed President Obama for his poor response to Hurricane Katrina. In asserting that these supposed fixed/false beliefs are little different from Respondent's delusional false/fixed beliefs, counsel miss the point. The poll responses simply manifest ignorance or some political/emotional need to hold the current President responsible for the conduct of his predecessor.

Court Judge David Zelanak, attorney Brian Summerfield, Detroit Police Lieutenant Lori Ann Sabatini and Stephen Mendelson, M.D.

Honorable Kenneth King

In her letter to U.S. Attorney Barbara McQuade, Respondent claimed, among other things,

“that there are judges who have suddenly died under suspicious circumstances in the last two years⁷; I believe they were murdered because they spoke out against some of the wrongs that were being committed at the court; one newspaper tried to name me as a suspect in one of the murders; I was at work on the day of the crime; the chief judge of the court was interviewed on the scene of the crime allegedly when my name was mentioned; the Detroit Free Press indicated that I was in a hotly contested race with one of the judges possibly suggesting that I may be a suspect.”

Judge King, 36th District Court Chief Judge at the time of the issuance of the letter, testified that the newspaper never mentioned Respondent as a possible murder suspect nor that she was even considered a suspect⁸. (T, p. 132).

Respondent further claims in the letter that she “was moved over to the criminal docket at the court even though I had seniority over many of the judges that actually requested the criminal docket. I was singled out and I was the only judge moved over to the criminal docket. All other judges were allowed to remain on their chosen dockets”.

⁷ Respondent appears to be referencing Judges Willie Lipscomb and George Chatman, who died as a result of accident and apparent suicide, respectively.

⁸ Current 36th District Court Chief Judge Nancy Blount confirmed Judge King’s testimony. (T, p. 149)

Judge King, however, testified that he ordered Respondent transferred from the civil to the criminal docket because of her failure to adequately process 400 case files. (T, pp. 117, 118, 123). He “had no confidence that she could continue on that docket.” (T, p. 124).

Judge King further testified that Respondent asserted that he (Judge King) was trying to get a “political advantage” over her (T, p. 129). He said that that idea was “non-sensical” since they were running for re-election in the same “PAC” (T, p. 128)

Judge King testified regarding a landlord-tenant case which had been filed against Respondent in the 36th District Court and which was ultimately transferred by the State Court Administrator’s Office (“SCAO”) to 25th District Court Judge David Zelenak. That case was an action seeking eviction for non-payment of rent. Respondent claimed Judge King was helping the plaintiff in that case to evict her (Ex 50). Judge King testified the claim was not true.

Judge King’s testimony demonstrates that the claims referenced in the McQuade letter and the persecutory assertions made to him by Respondent support Dr. Miller’s diagnosis that she suffered from paranoid delusions resulting from psychosis.

Ed Welch

On November 13, 2014, Ed Welch, a recovery agent, who “assist(s) financial institutions in recovery of various pieces of collateral, secured interest” (T, p. 91), went to Barnwell, S.C. to repossess Respondent’s automobile. Mr. Welch was confronted by Respondent who was understandably upset at the prospect of losing her car. In challenging his authority, however, Respondent made a number

of comments indicative of paranoia. She accused Welch of being a member of the KKK (which he adamantly denied); that “they” were “not a bunch of stupid n..... around here”; that “the honkies up in Michigan were trying to take everything away from her.” (T, p. 99); “She called me the scum of the earth.” (T, p. 100). “She threatened to sue me and my company in federal court.” (T, p.99) She “was just erratic...almost nonsensical at times.” (T, p.99).

Standing alone, Mr. Welch’s testimony would not be particularly significant. However, given the context in which her statements were made (i.e., the McQuade letter, Dr. Miller’s diagnosis, Judge King’s testimony) they indeed, become significant.

Honorable David Zelenak

Judge Zelenak is a judge of the 25th District Court, City of Lincoln Park to whom Respondent’s landlord-tenant case was reassigned in 2012. Judge Zelenak ultimately granted the Plaintiff’s motion for summary disposition (Order dated October 2, 2013) (T, p. 329). Notably, the case was a simple and straightforward action brought for eviction for non-payment of rent.

The Respondent, however, made the following claims with regard to the eviction in the McQuade letter:

- She was evicted by the former law firm of a current Michigan Supreme Court Justice;
- The Michigan Supreme Court evicted her from her residence;
- Before eviction she reported mortgage fraud to the FBI and the Detroit Police that was committed by the banks;

- The eviction moved speedily through a judge appointed by the Michigan Supreme Court;
- The Plaintiff's law firm has been the impetus for present attempts to audit her by all income tax agencies;
- All of these actions are attempts to destroy her name and to make her potentially unelectable.

There is no basis in fact to support Respondent's aforesaid claims. Her beliefs, so expressed, are consistent with Dr. Miller's opinion that she suffers from persecutory delusions; that she has "firmly fixed false beliefs of being persecuted by nearly everyone. I mean, she hasn't missed anyone. The people who evicted her, her superiors...Judge King...her (JTC) allegation against Judge Zelenak that conducted the eviction proceedings. She felt persecuted by him." (T, p. 430).

Judge Zelenak testified that he accommodated Respondent during the proceedings before him because of her claimed need for knee surgery. (T, pp. 329, 330, 331). He would not even permit the eviction to go forward until the property was brought into building code compliance. (T, p. 340). Judge Zelenak denied conspiring with anyone to evict her. (T, p. 340). In commenting on her behavior, he noted her "mood swings"; she was "excited"; "troubled"; "agitated". (T, pp. 342, 343).

Judge Zelenak treated Respondent with respect, civility, and courtesy. Her reactions to him and his rulings support Dr. Miller's opinion that Respondent was a seriously mentally ill person.

Brian Summerfield

Mr. Summerfield, the attorney for PFG Mortgage,⁹ filed the complaint for eviction against Respondent. In her Answer, Respondent alleged harrassment, criminal activity and unlawful entry. (Ex 147). Mr. Summerfield testified that each of the claims asserted in the Answer was untrue. (T, pp. 185, 186, 187).

He noted that Respondent filed a federal action against his client alleging unlawful entry, garbage tampering, harrassment and intimidation. That case was dismissed. (Ex 165).

Mr. Summerfield cited an e-mail sent to him on September 11, 2012 by Respondent (Ex 170)¹⁰. Mr. Summerfield said that the e-mail contained statements having nothing to do with her landlord-tenant case and that he did not know what she was talking about. (T, p. 192).

Laurie Ann Sabatini

Ms. Sabatini is a Lieutenant with the Detroit Police Department, currently assigned to the 9th precinct. Lt. Sabatini testified to police reports that Respondent filed in 2011 and 2013 (Ex. 179, 180, 181, 182). In these reports, Respondent claimed to have been the victim of criminal behavior and that the police responded to her residence at Sandbar Lane in Detroit pursuant to 911 calls.

⁹ Mr. Summerfield ultimately withdrew in favor of attorney George Nitschke, because of a conflict of interest due to a non-related matter. (T, p. 181)

¹⁰ The e-mail shows a disorganized, rambling, confusing account of events that may or may not have occurred but which, if they did, had no rational connection to Respondent's eviction case.

Lt. Sabatini's review of police department records, including two computer systems, indicated that police cars had never been dispatched to Respondent's residence. (T, p. 375).

There has never been any evidence, documentation or otherwise, that supports Respondent's claimed victimization.

The testimony of Mr. Summerfield and Lt. Sabatini support Dr. Miller's finding that Respondent suffers from delusions resulting in notions of persecution not based upon reality.

Stephen Mendelson, M.D.

Although Dr. Mendelson was requested to do an orthopedic evaluation (IME) with regard to Respondent's claimed need for knee surgery, his observations of her behavior during the examination process provide some insight into Respondent's state of mind. Dr. Mendelson was asked about Respondent's inability to answer questions concerning her physical condition. He responded:

"one is just being a layman, talking to this woman and having an interaction with this woman, left me with the feeling that she is not well, that she doesn't answer questions coherently... her evasiveness about answering the questions that were posed to her that day also suggest a layer of intent...she wasn't just random...she seemed to purposely avoid any questions any aspect of her orthopedic condition and that suggests to me some wilful intent." (T, p. 45)

He went on to indicate she was "vague", "evasive" and "bizzare" (T, p. 52) When asked whether he would tell Respondent to lose weight before surgery

occurred if he were the treating physician, he said “No, I would tell her to see a psychiatrist.” (T, p.47)

As with other witnesses Dr. Mendelson’s observations of Respondent are significant within the context of Dr. Miller’s findings and the McQuade letter.

Dr. Miller was asked to opine upon the ultimate issue in Count I – Respondent’s fitness to serve as a judge. He said:

“she cannot serve as a judge with her current psychiatric state. Her delusions are of the proportion she cannot interpret reality correctly...she has no insight into her behavior...her judgment arises out of delusions, not out of reality and facts. She could not make rational decisions. She would make decisions based on referring to herself and how the proceedings ...reflects back to her...that’s the reason she sequestered...witnesses in her court. She’s very paranoid. She’s very intimidated...Her insight and judgment are too impaired because of her delusions, to render opinions not only in court but elsewhere, but particularly in court as a judge.” (T, pp. 498, 499)

This writer agrees with Dr. Miller’s assessment and finds that it is clearly supported by the record developed at the hearing.

Count II: Fraud in Securing a Long-Term Leave of Absence

36th District Court Chief Judge Nancy Blount testified that in September, 2013, Respondent requested a medical leave of absence for surgery on her knees. Respondent provided a note, a portion of which was a prescription pad with the name of Aaron Maddox, M.D. indicating that Respondent is 100% disabled with

“infirmary in both my right and left knees.” (Ex 65) In the note, Respondent indicates she is going to have physical therapy and is anticipating surgery on both knees; that she would provide Judge Blount dates for the surgery before October 1, 2013.

Based upon the note, Judge Blount granted Respondent’s request for leave of absence with pay. Respondent discontinued work in September of 2013. Judge Blount never received dates of surgeries from Respondent nor did Respondent ever undergo knee, or any other, surgery.

Dr. Mendelson’s testimony establishes that Respondent did not have an orthopedic condition for which she required absence from work. Dr. Mendelson, a board certified orthopedic surgeon, performed an independent medical examination of Respondent on May 22, 2014. Dr. Mendelson based his findings on his interview and examination of Respondent; Detroit Medical Center – Huron Valley Radiology Reports; x-rays, including those taken in his office; Respondent’s “History of Present Illness Form”; Dr. Schmidt’s diagnostic report; and the note extending Respondent’s absence of work until March 10, 2014. (Ex 69).

Dr. Mendelson opined that Respondent had bilateral degenerative arthritis of her knees (T, pp 31, 40); a condition which can be treated with anti-inflammatory medication, injections, physical therapy, bracing and other non-operative treatments (T, p. 35). Surgery was an option, not a necessity (Ex 69, p. 45).

Respondent claimed that she had knee surgery scheduled for April 10, 2014. There is, however, no record of Dr. Schmidt, or any other physician or hospital, indicating that knee surgery was scheduled for April 10, 2014 or for any

other date. As noted in the discussion in Count I of this Report, an April 10, 2014 appointment for a psychiatric examination with Dr. Miller was made and confirmed with Respondent and her attorneys. Furthermore, on March 26, 2014, less than two weeks before her appointment with Dr. Miller, Respondent told her attorneys that “she was *just* informed that surgery on her left knee is going to take place on April 10 (emphasis provided) (Ex 10).

Dr. Mendelson’s findings are supported by the testimony of a number of witnesses and exhibits. Judges King and Blount saw no ambulation aids prior to, or after, Respondent obtained a medical leave of absence (T, pp. 132, 145). After obtaining leave, Respondent appeared at the courthouse on three occasions.¹¹

Craig Gregory, a 36th District Court officer, helped Respondent move items from her residence during the eviction on October 31, 2014. She was able to walk unaided and able to load boxes and furniture into her car. (T, pp. 158-160). And, as indicated earlier in this Report, Respondent was able to appear before Judge Zelenak without difficulty.

The Examiner for the Commission introduced and this writer admitted into evidence, a number of exhibits from Respondent’s Twitter account demonstrating her ability to function and to move about the community without difficulty before and during her leave of absence; e.g. playing the harp (Ex 108, 109); painting (Ex 115); preparing for evening exercise (Ex 119); at a Detroit Pistons game (Ex 113); at a concert (Ex 122); attending the Detroit Women’s Empowerment Expo (Ex 105).

¹¹ Deborah Green, SCAO Region One Director, testified she saw Respondent walking with no difficulty in a secured hallway of the courthouse, in November of 2013.

Respondent claimed that her physical disabilities and the need for surgery required a paid medical leave of absence from the bench. The evidence establishes that the claim was false. Her physical condition did not disqualify her from sitting as a judge. Chief Judge Blount relied upon Respondent's representation that pending surgery required absence from the bench. The representation was false. Respondent was paid for work which she did not do when she was, in fact, able to work.

Count III – Failure to cooperate with the Judicial Tenure Commission

This Count has been fully addressed in Count I. Although Respondent's unwillingness to cooperate with the commission regarding a psychiatric evaluation may have a psychiatric basis¹², it is abundantly clear that the Respondent refused to comply with a reasonable request of the Commission in violation of MCR 9.208(B) and that she refused to obey the Order of the Michigan Supreme Court to undergo the independent psychiatric evaluation.¹³

Count IV – Misrepresentations

The record established that Respondent made a number of misrepresentations to the Commission during the course of its investigation into this matter.

¹² Noted previously is Dr. Miller's testimony that Respondent's psychosis could result in paranoia and fear that might to some extent lead her to be oppositional regarding her evaluations. The discharge of her attorney and her failure to appear in federal court bankruptcy proceedings, (which resulted in dismissal of her petition) could also be consistent with such fear and paranoia. Her illness could manifest itself in feelings of grandiosity (self-importance) and manipulative behavior (T, 487, 488).

¹³ Furthermore, Respondent's failure to submit to a medical examination may be considered as an evidentiary fact. MCR 9.211(B)(2)

This writer accepts the position of the Commission in its Proposed Findings of Fact and Conclusions of Law (T, pp. 17-19). Those findings are accurate and consistent with the evidence.

On March 28, 2014, Susina Spezia, Scheduling clerk for Dr. Mendelson (T, p. 23) contacted Respondent with instructions to bring her medical records and x-rays to the March 31, 2014 examination (Ex 16, T, pp. 79, 80). In her July 22, 2014 Answer to the Commission's 28 day letter, Respondent admitted receiving those instructions (Ex 80, P. 34, para 81) and claimed that she provided Dr. Mendelson with her medical records from Dr. Schmidt and the x-rays of her knees on March 31, 2014 (Ex 80, p. 34, para 82). Respondent's representations were false. And because a complete evaluation could not be performed without these records the appointment could not proceed. (T, p. 83).

The IME was rescheduled for May 22, 2014 (Ex 31). The following claims by Respondent were false: that she did not know why the March 31, 2014 appointment was cancelled (Ex 80, p. 35, para 83); that the March IME was rescheduled "because it was not clear to Dr. Mendelson's office as to what party was paying for the examination" (Respondent's Answer to FC 95, p. 8, para 46, T, 83) and that she appeared for an examination with Dr. Mendelson on April 17, 2014 (Respondent Answer to FC 95, para 46, T, pp. 87,88).

Additionally, the record shows that the following representations by respondent were false:

a. Respondent's assertion that she could not keep her April 10, 2014 examination with Dr. Miller because her knee surgery was scheduled for the same day (Ex 75, p. 2; Ex 80, p. 25).

b. Respondent's September, 2013 claim that two surgeries were imminent in order to secure a long-term medical leave;

c. Respondent's claim in a federal court motion that her eviction was set to be executed while she was scheduled to be recovering in the hospital (Ex 96);

d. Respondent filed a motion for installment payments before Judge Zelenak, claiming she was "expecting to have two immediate surgeries" (Ex 78);

Respondent gave different reasons for the postponement of her knee surgery. She told Deborah Green that she was advised to lose weight (T, 167). In the McQuade letter she claimed it was because of her fear that someone would kill her during the procedure. She informed the Commission that postponement was because her doctors decided upon physical therapy instead of surgery. (Ex 75, p.2)

Finally, her representations that she was and could continue to make herself available for the examination with Dr. Miller is belied by her conduct as described in this Report.

The record supports the conclusion that Respondent made numerous false representations to the Commission.

CONCLUSION

Sadly, the evidence clearly proves that Respondent is psychotic and, therefore, seriously mentally ill. Her mental disability renders her unfit to sit as a judge. Her illness prevents her from being able to properly perform judicial duties. (Count I)

The evidence clearly proves that Respondent has failed to cooperate with reasonable requests of the Commission and an Order of the Michigan Supreme Court. (Count III)

The evidence clearly proves that Respondent committed fraud in her request for a long-term medical leave of absence. (Count II)

The evidence clearly establishes that Respondent made numerous false representations to the Commission during the course of its investigation. (Count IV)


Respondent's conduct constitutes violations of the following:

1. Michigan Constitution 1963, Article VI Section (2); MCR 9.205(B) – mental disability which prevents the performance of judicial duties (Count I)
2. Michigan Constitution 1963, Article VI, Section; MCR 9.205 – misconduct in office; conduct clearly prejudicial to the administration of justice. (Count II)
3. Code of Judicial Conduct, Canon 1 – failure to establish, maintain, enforce, and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. (Counts II and IV)
4. Code of Judicial Conduct, Canon 2A – irresponsible or improper conduct which erodes public confidence in the judiciary. (Counts II, III and IV)
5. Code of Judicial Conduct, Canon 2B – failure to respect and observe the law and to conduct herself at all times in a manner which would promote the public's confidence in the integrity and impartiality of the judiciary. (Counts II, III and IV)

6. MCR 9.104(3) – conduct which is contrary to justice, ethics, honesty or good morals. (Counts II and IV)

7. MCR 9.104(4) – conduct that violates the standards or rules of professional conduct adopted by the Supreme Court. (Counts II, III and IV)

Respectfully submitted,



Michael F. Sapala
Hearing Master

Dated: January 6, 2015